

ANN BAVENDER\*  
ANNE GOODWIN CRUMP\*  
VINCENT J. CURTIS, JR.  
RICHARD J. ESTEVEZ  
PAUL J. FELDMAN  
ERIC FISHMAN  
RICHARD HILDRETH  
FRANK R. JAZZO  
ANDREW S. KERSTING\*  
EUGENE M. LAWSON, JR.  
HARRY C. MARTIN  
GEORGE PETRUTSAS  
LEONARD R. RAISH  
JAMES P. RILEY  
KATHLEEN VICTORY  
HOWARD M. WEISS  
\* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET  
ARLINGTON, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

office@fhh-telcomlaw.com

FRANK U. FLETCHER  
(1939-1985)  
ROBERT L. HEALD  
(1936-1962)  
PAUL D.P. SPEARMAN  
(1936-1961)  
FRANK ROBERSON  
(1936-1961)  
RUSSELL ROWELL  
(1948-1977)

RETIRED  
EDWARD F. KENEHAN

CONSULTANT FOR INTERNATIONAL AND  
INTERGOVERNMENTAL AFFAIRS  
SHELDON J. KRYSS  
U. S. AMBASSADOR (ret.)

OF COUNSEL  
EDWARD A. CAINE\*  
MITCHELL LAZARUS\*  
EDWARD S. O'NEILL\*  
JOHN JOSEPH SMITH\*

WRITER'S DIRECT

812-0474

RECEIVED  
MAR 19 1998  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

March 19, 1998

**BY HAND DELIVERY**

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

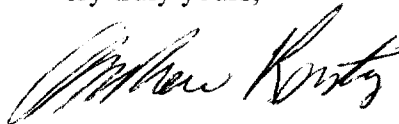
Re: Reply of Metro Broadcasters-Texas, Inc.  
MM Docket No. 97-91; RM-9221  
Lewisville, Gainesville, Robinson, Corsicana,  
Jacksboro, and Mineral Wells, Texas

Dear Ms. Salas:

Transmitted herewith on behalf of Metro Broadcasters-Texas, Inc. are an original and four copies of its "Reply of Metro Broadcasters-Texas, Inc." in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,



Andrew S. Kersting  
Counsel for  
Metro Broadcasters-Texas, Inc.

Enclosures  
cc (w/ encl.): Certificate of Service

Not a Confidential Matter  
List A200.0

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

**RECEIVED**  
**MAR 19 1998**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations )  
(Lewisville, Gainesville, Robinson, )  
Corsicana, Jacksboro, and )  
Mineral Wells, Texas) )

MM Docket No. 97-91  
RM-8854

To: Chief, Allocations Branch

**REPLY OF**  
**METRO BROADCASTERS-TEXAS, INC.**

Metro Broadcasters-Texas, Inc. ("Metro"), licensee of Station KHYI(FM), Howe, Texas, by counsel and pursuant to Section 1.41 of the Commission's rules, hereby replies to the "Partial Opposition to Motion to Dismiss or Strike" ("Partial Opposition"), filed March 11, 1998, by Heftel Broadcasting Corporation ("Heftel"), and the "Joint Opposition to Motion to Dismiss or to Strike Joint Reply Comments and Reply Comments" ("Joint Opposition"), filed March 11, 1998, by Heftel and Jerry Snyder and Associates, Inc. ("Snyder") (collectively referred to herein as the "Opponents").

In support of this reply, the following is stated:

In their Partial Opposition and Joint Opposition pleadings, the Opponents argue that Metro's "Motion to Dismiss or to Strike Joint Reply Comments and Reply Comments" ("Motion"), filed February 24, 1998, is an unauthorized pleading and should be stricken. Partial Opposition, p. 3; Joint Opposition, p. 2. The Opponents also argue that the curative amendment proposed in their

February 12, 1998, Joint Reply Comments<sup>1</sup> does not constitute a buy-out in violation of Section 1.420(j) of the Commission's rules. Joint Opposition, pp. 5-6.

The only reason Metro filed its February 24, 1998, Motion is because the Commission released a Public Notice on January 28, 1998,<sup>2</sup> stating that Snyder's pending application for the Channel 240C1 facility at Mineral Wells, Texas (File No. BPH-961125IG),<sup>3</sup> was being considered as a counterproposal in this proceeding. In issuing the Public Notice, the Commission apparently did not recognize that the Channel 240C1 allotment at Mineral Wells has existed since April 20, 1992, and that Heftel's rulemaking proposal in this proceeding failed to protect that allotment in accordance with Section 73.207(a) of the Commission's rules. Indeed, as Metro has demonstrated in its previous pleadings in this proceeding, Heftel's proposal was not "technically correct and substantially complete" either at the time it was filed or as of the counterproposal deadline. Therefore, it must be dismissed. *Cloverdale, Montgomery and Warrior, Alabama*, 12 FCC Rcd 2090, 2093 (Chief, Policy and Rules Division 1997); *See also Carlisle, Irvine, and Morehead, Kentucky*, 12 FCC Rcd 13181, 13182 (Chief, Allocations Branch 1997); *Frederiksted and Charlotte Amalie, Virgin Islands*, 12 FCC Rcd 2406, n.3 (Chief, Allocations Branch 1997).

The Commission's issuance of the Public Notice, whether inadvertent or not, cannot extend the deadline by which Heftel's proposal was required to be technically correct and substantially complete. The case law cited above makes clear that proposals must be technically correct and

---

<sup>1</sup> See "Joint Reply Comments of Heftel Broadcasting Corporation and Jerry Snyder and Associates, Inc." (referred to herein as "Joint Reply Comments"), filed February 12, 1998.

<sup>2</sup> See *Public Notice*, Report No. 2251 (released January 28, 1998) ("Public Notice").

<sup>3</sup> All communities referenced herein are located in the state of Texas.

substantially complete as of the initial comment deadline. Metro's Motion was merely designed to ensure that the Commission was fully aware of the defective nature of Heftel's proposal in light of the existing Channel 240C1 allotment at Mineral Wells.

Furthermore, to the extent it is relevant, the Opponents' argument concerning Section 1.420(j) of the rules serves only to underscore the artificial nature of their buy-out proposal. Although the Channel 240C1 allotment at Mineral Wells has existed since April 1992 and Snyder filed its application for that facility in November 1996, the Opponents would have the Commission, as part of its public interest analysis, compare the population served within the 60 dBu contour of a Class C1 facility operating from the new reference point proposed in the Opponents' Joint Reply Comments, with the population within the 60 dBu contour of Station KYXS' existing Class C3 operation. It cannot be more clear, however, that the population currently served by KYXS' Class C3 facility is irrelevant because the Commission has already determined that the public interest would be served by the allotment of a Class C1 facility at Mineral Wells.<sup>4</sup> Snyder should not be permitted to claim a public interest benefit by comparing the population within KYXS' existing Class C3 60 dBu contour vis-a-vis that within the 60 dBu contour of a Class C1 facility operating at the proposed reference coordinates because this would effectively reward Snyder for its failure to construct the Class C1 facility specified in its expired construction permit. Indeed, the only reason KYXS is still operating with Class C3 facilities is because Snyder has been unable to implement its Class C1 construction permit.<sup>5</sup>

---

<sup>4</sup> *Mineral Wells and Winters, Texas*, 7 FCC Rcd 1791 (Chief, Allocations Branch 1992).

<sup>5</sup> To the extent there is any question concerning Snyder's ability and/or willingness to construct the Channel 240C1 facility at the site proposed in its pending application (BPH-  
(continued...))

As demonstrated in Metro's Motion (*see* pages 7-8), a maximum Class C1 facility operating from the reference point proposed in the Opponents' Joint Reply Comments would serve only 39.6% of the population within its 60 dBu contour that would be served by the Class C1 facility proposed in Snyder's pending application. The proposed Class C1 facility also would serve only 70.1% of the population within its 70 dBu contour that would be served by the facility specified in Snyder's application.<sup>6</sup> The substantial loss in population that would result from moving the Channel 240C1 facility to the reference point proposed in the Joint Reply Comments establishes that the Opponents' belated proposal to move the reference coordinates for the Channel 240C1 allotment at Mineral Wells constitutes nothing more than a pay-off intended to handsomely remunerate Snyder for withdrawing its timely November 1996 application, which blocks Heftel's proposal. If the Opponents were to be successful in moving the reference coordinates of the Mineral Wells allotment,

---

<sup>5</sup>(...continued)

961125IG), Snyder is far less likely to construct a Class C1 facility at the reference coordinates proposed in the Opponents' Joint Reply Comments due to the significantly diminished population coverage afforded by that location.

<sup>6</sup> The Opponents' argument concerning Metro's engineering analysis, to the extent it is discernible, is without merit. The Opponents apparently fault Metro because, although it used the reference point proposed in the Opponents' Joint Reply Comments for purposes of determining the population that would be served by the 60 dBu contour of a Class C1 facility operating from that location, it did not use the reference coordinates for the existing Class C1 facility at Mineral Wells in determining the population that would be served by that facility, but, rather, based its population study upon the site proposed in Snyder's pending application. The Opponents' attempt to discredit Metro's engineering analysis is unavailing. The reason Metro used the site proposed in Snyder's pending application is because that application constitutes an expression of interest in the existing Mineral Wells allotment, and provided a specific transmitter site from which to determine the population that would be served by KXYS' 60 dBu contour if the station were to operate as a Class C1 facility, as proposed in Snyder's application. With respect to the proposal to move the reference coordinates of the Channel 240C1 allotment, however, Metro had to rely on the reference coordinates in conducting its engineering study because no application has been filed for that facility which would provide Metro with a specific transmitter site from which to determine the station's 60 dBu population coverage.

Heftel could achieve its ultimate goal of moving Station KECS from Gainesville to Lewisville and upgrade the station from Channel 300C2 to 300C1, which would permit KECS to serve the Dallas metroplex. Thus, despite the Opponents' contentions to the contrary, the record establishes that the sole motivation for Snyder's willingness to dismiss BPH-961125IG and move to a reference site 26.7 miles southwest of Mineral Wells -- a site which the Opponents readily admit is "less desirable" and "less commercially viable"<sup>7</sup> -- is the substantial monetary payment that Heftel has agreed to provide Snyder under the Opponents' undisclosed "Compensation Agreement." Therefore, even assuming, *arguendo*, the Commission were willing to consider Heftel's untimely attempt to cure its defective proposal, the Opponents must file a copy of their Compensation Agreement and demonstrate that, in accordance with Section 1.420(j) of the rules, Snyder (and its principals) will receive no more than its legitimate and prudent expenses incurred in the preparation and filing of its expression of interest in the Channel 240C1 allotment at Mineral Wells.

WHEREFORE, in light of the foregoing, Metro Broadcasters-Texas, Inc. respectfully requests that the Commission: (i) GRANT (to the extent necessary) its request for leave to file its February 24, 1998, Motion; (ii) GRANT its Motion and DISMISS or STRIKE the (a) Joint Reply Comments of Heftel Broadcasting Corporation and Jerry Snyder and Associates, Inc.; (b) Reply Comments of Jerry Snyder and Associates, Inc.; and (c) Further Reply Comments of Heftel Broadcasting Corporation; and (iii) GRANT Metro's counterproposal proposing the substitution of Channel 237C2 for Channel 237C3 at Howe, Texas, and modify the license of Station KHYI(FM), to specify operation on Channel 237C2 in lieu of Channel 237C3.

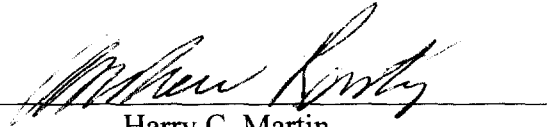
---

<sup>7</sup> Joint Opposition, p. 4; Joint Reply Comments, p. 3.

Respectfully submitted,

METRO BROADCASTERS-TEXAS, INC.

By:

A handwritten signature in dark ink, appearing to read "Andrew S. Kersting", written over a horizontal line.

Harry C. Martin

Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.  
1300 North Seventeenth Street  
11th Floor  
Arlington, Virginia 22209  
(703) 812-0400

March 19, 1998

c:\ask...martin\rm\heftel.rep

### **CERTIFICATE OF SERVICE**

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 19th day of March, 1998, copies of the foregoing "Reply of Metro Broadcasters-Texas, Inc.," were hand delivered or mailed first-class, postage pre-paid, to the following:

Bruce A. Romano, Deputy Chief\*  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 536  
Washington, DC 20554

John A. Karousos, Chief\*  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 565  
Washington, DC 20554

Ms. Pam Blumenthal\*  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 565  
Washington, DC 20554

Mr. Dale Bickel\*  
Audio Services Division  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 332  
Washington, DC 20554

Roy R. Russo, Esquire  
Lawrence N. Cohn, Esquire  
Cohn and Marks  
1333 New Hampshire Avenue, N.W.  
Suite 600  
Washington, DC 20036  
Counsel for Heftel Broadcasting Corporation



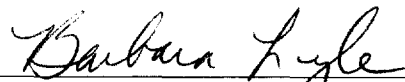
Mark N. Lipp, Esquire  
Ginsburg, Feldman & Bress  
1250 Connecticut Avenue, N.W.  
Washington, DC 20036-2600  
Counsel for Hunt Broadcasting, Inc.

Robert Healy, Esquire  
Smithwick & Belendiuk, P.C.  
1990 M Street, N.W., Suite 510  
Washington, DC 20036  
Counsel for Jerry Snyder and Associates, Inc.

Erwin G. Krasnow, Esquire  
Verner, Liipfert, Bernhard,  
McPherson & Hand, Chartered  
901 15th Street, N.W., Suite 700  
Washington, DC 20005  
Counsel for Graham Newspapers, Inc.

William J. Pennington, Esquire  
P.O. Box 403  
Westfield, Massachusetts 10186  
Counsel for Great Plains Radiocasting

John F. Garziglia, Esquire  
Pepper & Corazzini, L.L.P.  
1776 K Street, N.W., Suite 200  
Washington, DC 20006  
Counsel for K95.5, Inc. (licensee of Station KITX)

  
Barbara Lyle

\* Hand Delivered